

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Telecommunications)	CC Docket No. 96-115
of 1996;)	
)	
Telecommunications Carriers' Use of)	
Customer Proprietary Network Information)	
And Other Customer Information;)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Section 271 and 272 of the)	
Communications Act of 1934, as Amended;)	
)	
2000 Biennial Regulatory Review - -)	
Review of Policies and Rules Concerning)	CC Docket No. 00-257
Unauthorized Charges of Consumers')	
Long Distance Carriers)	
_____)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

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October 21, 2002

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COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC) Rules 1.415 and 1.419,² hereby provides comments to the Third Further Notice of Proposed Rulemaking (Further Notice)³ in the above-docketed proceeding. USTA's interest in this proceeding is to ensure that regulatory rules and policies that are ultimately applied to its incumbent local exchange carrier (ILEC) members are

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ See *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; 2000 Biennial Regulatory*

within the limits imposed by Congress in section 222 of the Communications Act of 1934, as amended.⁴

SUMMARY

The FCC in its Further Notice seeks to refresh the record as to issues involving the regulation of foreign storage and access to domestic customer proprietary network information (CPNI), and protections for carrier information and enforcement mechanisms. In addition, the FCC requests comment on what appropriate regulations should govern the CPNI held by carriers that go out of business, sell part of their customer base, or file for bankruptcy.

DISCUSSION

A. Regulation of Foreign Storage of and Access to Domestic CPNI

The FCC asks that the record be refreshed in regards to the comments it received to a FBI request in the Second Report and Order and Further Notice of Proposed Rulemaking in this docketed proceeding.⁵ In its request, the FBI sought regulation of foreign storage and access to domestic CPNI of United States (U.S.) customers who use domestic telephone services.⁶

Specifically, the FCC seeks comment on the FBI proposal that foreign storage or access to domestic CPNI be permitted only through informed written customer approval. In addition, if CPNI were stored in a foreign country, the FBI would like the FCC to require carriers to keep a

Review - - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket Nos. 96-155, 96-149, and 00-257 (July 25, 2002) (Further Notice).

⁴ 47 U.S.C. § 222.

⁵ See *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, Second report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, at paras. 208-210 (1998) (CPNI Order).

⁶ Further Notice at ¶ 144 (citing Letter from John F. Lewis, Jr., Federal Bureau of Investigation, to William F. Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 96-115 (filed July 8, 1997)).

copy of customers' CPNI records within the U.S. Finally, the FBI, for law enforcement purposes, requested that the FCC require carriers to maintain copies of the CPNI of all domestic U.S. customers.

For the following reasons, USTA contends that telecommunications carriers should be permitted to store and access in foreign countries the CPNI of U.S. customers who use domestic telecommunications services. As their international presence increases, many larger telecommunications carriers serving U.S. and international customers may wish to consolidate and store customer records outside of the U.S. Carriers should be permitted to do so without the need for new burdensome regulations. Given that carriers need not currently disclose to customers the location of CPNI stored domestically, they should likewise not be required to disclose (or gain customer approval for) the storage of CPNI in foreign countries. In addition, rational business practices, and not additional regulation, should guide the storage of redundant CPNI information. Thus, the FCC should not mandate the redundant storage of such information, nor require additional notice to customers regarding the foreign storage and use of CPNI.

B. Protections for Carrier Information and Enforcement Mechanisms

The FCC seeks to refresh the record concerning its current policies and rules associated with protections for carrier information and enforcement mechanisms.⁷ Specifically, the FCC seeks comment on the safeguards needed to protect the confidentiality of carrier proprietary

⁷ 47 C.F.R. § 64.1120(e) and orders in CC Docket No. 00-257.

information⁸ and whether further enforcement mechanisms should be adopted in order to ensure carrier compliance with CPNI.⁹

USTA believes that the current CPNI rules provide adequate protection to consumers. Consequently, the CPNI rules should not be expanded at this time.

C. CPNI Implications When a Carrier Goes Out of Business

The FCC seeks comment on carrier use and disclosure of CPNI when it sells its assets or goes out of business. USTA believes that the FCC has a significant interest in ensuring that consumers' telecommunications services are seamlessly transitioned during a carrier's sale of assets to another provider. Thus, USTA welcomes the opportunity to provide comments on this most important issue.

Initially, the FCC asks whether an existing carrier should be able to use CPNI to transition its customers to another carrier and if so, should the FCC require the existing carrier to provide notice to its customers acquired by the sale or transfer from another carrier under the FCC's current rules.¹⁰ In addition, the FCC seeks comment on when an existing carrier has obtained CPNI approvals from its customers, should it be required to obtain notice and approval for CPNI use and disclosure from the acquired customer. Finally, the FCC asks whether it should recognize a difference between service types.

USTA contends that when a carrier sells assets, both the selling and acquiring carrier has an interest in ensuring the smooth transition of customers to the new service provider. Consequently, carriers should be permitted to utilize CPNI to transition customers without having to acquire customer approval for use of the CPNI. USTA believes that requiring carriers

⁸ See *CPNI Order* at paras. 206-207.

⁹ *Id.*

to obtain new CPNI approvals to share CPNI with the acquiring carrier could significantly hamper such transitions. Therefore, carriers should be permitted to utilize CPNI without the need to notify consumers or obtain their approval.

Moreover, the acquiring carrier should not be required to obtain new CPNI approvals from the acquired customers prior to the expiration of the customers' current CPNI approval. The acquiring carrier should not be required to obtain new CPNI authorizations after an asset acquisition since the consumer has already elected whether to permit use of its CPNI by its telecommunications provider. Finally, the CPNI rules should apply uniformly to all covered telecommunications services. The FCC should not adopt various tiers of rules based on the types of telecommunications service provided.

Respectfully submitted,

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¹⁰ See Verification of Orders for Telecommunications Service, 47 C.F.R. § 64.1120(e).